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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,436	10/22/1999	RICHARD ROBERT CAPPADONA	66635	9564

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/12/2003

25

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/425,436

Applicant(s)

CAPPADONA ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-6 and 8-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-6 and 8-19 is/are allowed.
- 6) ☒ Claim(s) 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Request for Continued Examination*

1. The request filed on December 13, 2002 for an RCE based on parent Application No. 09/425,436 is acceptable and an RCE has been established. An action on the RCE follows.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer [Pat. No. 4,330,069] in view of Stephen et al [Pat. No. 4,966,125].

Bauer teaches a cooking device comprising a cooking vessel (column 5, line 58), a lid with a curved shape and rim (Figure 3, 1"), a knob assembly which acts as a holder (Figure 3, 2"), an aperture which passes through the lid and knob assembly and contains a thermometer (Figure 3, 24), a temperature display (Figure 4, 23), a temperature sensor above the level of the rim (Figure 3, 22), and a retaining member (Figure 3, 3"a). Bauer does not recite removing the thermometer or the probe having a hollow tubular structure. Stephen et al teach a cooking device having a removable thermometer located in the handle of a lid (Figure 3, 56). It would have been obvious to one of ordinary skill in the art to incorporate the removable thermometer of Stephen et

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al into the invention of Bauer since both are directed to cooking devices with thermometers in their handles, since the thermometer of Bauer lacks any impediments to its being lifted out of the lid handle (Figure 3), and since Stephen et al teach that a removable thermometer can be used to measure the temperature of the food itself as well as the air temperature within the vessel (column 4, lines 11-16). Although not specifically recited, it would have been obvious to one of ordinary skill in the art that the temperature probe of Bauer would be hollow since thermometers were commonly made with hollow tubular bodies in order to hold a temperature sensitive material such as mercury, a spring, or a thermocouple. Phrases such as "for use in stove top waterless cooking" are merely preferred methods of using the claimed apparatus and as such are not given patentable weight.

4. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hupf et al [Pat. No. 6,004,000] in view of Bauer.

Hupf et al teach a method of waterless cooking by placing food with little or no water into a pan, placing a lid over the pan, heating the bottom of the pan, measuring the temperature, closing the vent, and reducing the heat (column 6, lines 31-44), the lid comprising a knob (Figure 2A, 100), a vent (Figure 2A, 25), and a temperature sensor (Figure 1, 150). Hupf et al do not teach a thermometer which extends through the lid. Bauer teaches a lid with a thermometer which extends through the lid (Figure 3, 22). It would have been obvious to one of ordinary skill in the art to incorporate the thermometer of Bauer into the invention of Hupf et al since both are directed to methods of cooking, since Hupf et al already includes a temperature sensor, and since the

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thermometer of Bauer would provide a more accurate and quicker temperature reading since it directly senses the temperature of the atmosphere within the pot, rather than the temperature of the lid which is in turn heated by the air within the pot, as done by Hupf et al.

***Allowable Subject Matter***

5. Claims 2-6 and 8-19 are allowed.
6. The following is an examiner's statement of reasons for allowance: the cooking devices of independent claims 2, 8, and 15 define over the prior art of record since the prior art does not teach, suggest, nor render obvious a dual function notch which enables removal of the movable member and acts as a slot to enable the whistle.

***Response to Arguments***

7. Applicant's arguments filed December 13, 2002 have been fully considered but they are not persuasive.

Applicant argues against the "method of use" rejection. However, intended use has been continuously held not to be germane to determining the patentability of the apparatus, *In re Finsterwalder*, 168 USPQ 530. The manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, *In re Casey*, 152 USPQ 235. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, *Ex*

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*parte Masham*, 2 USPQ2d 1647. The purpose to which an apparatus is to be put and expression relating apparatus to contents thereof during intended operation are not significant in determining patentability of an apparatus claim, *Ex parte Thibault*, 164 USPQ 666.

Applicant argues that the rejection does not address Bauer with respect to a removable holder and a retaining member that selectively retains the thermometer. However, page 2, paragraph 2 of the Final Rejection (paper no. 20) specifically recites "a knob assembly which acts as a holder (Figure 3, 2")... and a retaining member (Figure 3, 3)".

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Bauer teaches a cooking device with a lid mounted thermometer, and Stephen et al is directed to a cooking device with a lid thermometer which is removable.

Applicant argues that the declaration of Mr. Cappadona shows commercial success, and therefore would negate the above rejection. However, the declaration does not overcome the above rejections. Commercial success does not equate to

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patentability. The commercial success could be due to Mr. Cappadona's skill in marketing the device, or some other feature which the public finds appealing.

### ***Conclusion***

8. This is an RCE of applicant's earlier Application No. 09425,436. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew E Becker  
Examiner  
Art Unit 1761

February 4, 2003

  
KEITH HENDRICKS  
PRIMARY EXAMINER